S.2355 Rm. 658

JUN 28 1982

Mr. Robert E. Carlstrom
Office of Assistant Director
for Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Re: S.2355

Dear Mr. Carlstrom:

This is in response to your request for comments on the draft report of the Department of Commerce on S.2355, a bill which would provide that persons with impaired hearing are ensured reasonable access to telephone service.

In brief, the Department of Commerce generally supports the bill but recommends that the bill be amended to require that the Federal Communications Commission establish performance standards to ensure compatability between telephones and hearing aids.

On May 6, 1982, a representative of the Commission testified on this bill and on S.604 at a hearing before the Subcommittee on Communications of the Senate Committee on Commerce, Science, and Transportation, chaired by Senator Goldwater. Enclosed is a copy of that testimony which discusses this legislation. In response to specific questions that arose at the hearing, the agency's witness prepared a letter (also enclosed) for Senator Goldwater dated May 28, 1982 which addresses certain contingencies.

In general, these views are consistent with the draft of the Department of Commerce. However, the draft envisions the FCC setting performance standards for compatibility between telephones and hearing aids. In that regard the proposal is at variance with the Commission's existing role in setting technical standards. Specifically, our role in that respect has been limited to ensuring that equipment interconnected with the

telecommunications network will not harm the network. Our technical standards have been narrowly directed to this end. The enclosed testimony reflects reservations to any expansion of the purposes for which technical standards should be imposed.

Sincerely yours,

Stephen A. Sharp
General Counsel

Enclosures

MHayes/ck
6/28/82

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 14, 1982

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer

Department of Justice
✓Federal Communications Commission
Department of Health and Human Services
Architectural and Transportation
Barriers Compliance Board

SUBJECT: Commerce draft report on S. 2355 re telephone service for the hearing impaired

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than cob June 28, 1982.

Questions should be referred to Jan Fox (395-4874, the legislative analyst in this office, or to Mike Natoli (395-6156).

Robert E. Carlstrom for
Assistant Director for
Legislative Reference

Enclosures
cc: Lynn Etheredge

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

DRAFT

Honorable Bob Packwood
Chairman, Committee on Commerce,
Science, and Transportation
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in reply to your request for the views of this Department concerning S. 2355, a bill

> "To amend the Communications Act of 1934 to provide that persons with impaired hearing are ensured reasonable access to telephone service."

The Department of Commerce supports the goal of this bill. However, legislation in this area should focus mandatory performance requirements as narrowly as possible while balancing the costs and benefits to all telephone users. With the modifications discussed below, S. 2355 meets this test.

The hearing impaired have been able to use telephones in the past because most telephones were not precision engineered. These telephones "leaked" otherwise imperceptible electric impulses which were picked up by traditional hearing aids, thus, enabling use by the hearing impaired. Advances in solid state electronics, however, have resulted in the manufacture of telephones that do not "leak", preventing use by individuals requiring a hearing aid.

To a large extent, the problem of access for the hearing impaired has been addressed without legislation. Over 80 percent of coin-operated telephones are compatible with hearing aids, as are all new coin-operated public telephones. Telephone companies are voluntarily converting others as servicing is needed. Telephone companies also routinely provide without charge receiver volume controls to the hearing impaired who do not rely on a hearing aid. Additionally, telephone industry associations long have provided the severely hearing impaired with special teletype equipment, usually at a price far below cost. The remaining need for Federal legislation is to ensure the continued conversion of coin-operated public telephones and to ensure access by the hearing impaired to other telephones frequently used by the public or provided for emergency use.

This should not be accomplished by mandating the use of inductive receptors or any other specific technology, since such a mandate would discourage further technical developments. Instead, the Federal Communication Commisssion (FCC) should be directed to set performance standards to ensure compatibility between telephones and hearing aids. Moreover, the performance standards should apply only to coin-operated public telephones and other telephones frequently used by the public or provided for emergency use. It would be unnecessarily costly to require all private telephones to meet standards for the hearing impaired. Each individual should be allowed to select the telephone best meeting his or her needs.

The Department of Commerce, therefore, recommends that S. 2355 be amended so that new subsection 225(b) of the Communications Act of 1934 would require the FCC to establish performance standards to ensure compatibility. Proposed subsection 225(c) should be deleted.

The modifications suggested above will not interfere with the purpose of S. 2355 to ensure access to telephone service for the hearing impaired. They will remove possible impediments to new technology and reduce the cost of implementing the bill.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this letter to the Congress from the standpoint of the Administration's program.

Sincerely,

Sherman E. Unger
General Counsel

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

May 28, 1982

IN REPLY REFER TO:

Honorable Barry Goldwater
Committee on Commerce, Science and
Transportation
United States Senate
Washington, D. C. 20510

Attention: Dan Phythyon

Dear Senator Goldwater:

On May 6, 1982, you made two requests at the hearing before the Subcommittee on Communications about S. 604 and S. 2355, bills on telephone compability with hearing aid devices and other telephone access for those with hearing impediments. This letter responds to them.

First, you requested that we submit suggested language to clarify, and expand, if necessary, our jurisdiction so that the Federal Communications Commission would have the authority to discharge responsibilities assigned to it under S. 2355. I would suggest that subpart 225(a) be amended to read as follows:

> The Commission shall establish such regulations <u>governing the manufacture, sale, lease or interconnection of terminal equipment</u> as are necessary to ensure reasonable access to telephone service by persons with impaired hearing. (The underscored words are the suggested additional ones.)

This language would be helpful if the Commission were to regulate hearing aid compabibility of various classes of telephones, such as hospital telephones, and to establish labeling and packaging requirements. As you know, in the <u>Second Computer Inquiry</u> the Commission deregulated the provision of terminal equipment by public utility telephone companies. We have taken the position that we have, at present, limited jurisdiction over terminal equipment. Thus far, we have exercised jurisdiction over such equipment very cautiously. For example, in our Part 68 program

discussed below, we focus solely on the technical design of terminal equipment so as to ensure that it can be physically interconnected with, and will not harm, the telecommunications network.

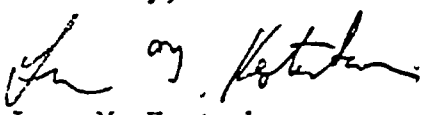
We have also considered whether asserting jurisdiction over either telephone equipment consumers or the telephone companies with which terminal equipment is interconnected is a good way to implement S. 2355. However, under this approach we could not enforce the labeling and packaging requirements in subpart (d). In addition, except for regulating pay telephone offerings of telephone companies which we now have the jurisdiction to do, we have concluded that it would be very difficult to enforce requirements against telephone companies that only hearing aid-compatible equipment be interconnected. Since under the Second Computer Inquiry telephones will not be part of public utility service, telephone companies would not routinely be able to determine whether a subscriber's terminal is compatible with the needs of the hearing impaired. We have also decided that enforcement of a regulation prohibiting installation of non-hearing aid compatible equipment against consumers would be difficult.

It is possible to require finite classes of consumers, such as municipalities, hospital and nursing home owners, and owners of elevators with emergency telephone equipment, to interconnect only compatible equipment. If the Senate chose to take this approach, subpart (b) of S. 2355 would have to be modified so as to be directly applicable to owners of hospitals and other public places. Under this approach, the Commission would still need a grant of broad jurisdiction over manufacturers under subpart (a), or a somewhat narrower grant under subparts (c) and (d) to establish technical standards or labeling requirements.

You also inquired at the hearing about the compatibility of imported terminal equipment with the telecommunications network. Our Part 68 program sets uniform technical standards to protect the telephone network from any harm which would be caused by interconnection of defective terminal equipment. It applies to all terminal equipment, manufactured here or abroad, to be installed in the United States. Under the Part 68 program this Commission registers terminal equipment which complies with our technical interconnection standards. Consumers who buy equipment with an FCC registration number are, then, certain that they can connect this equipment with the telephone network. At present, of the approximately 900 registration grantees, about 34 are U.S. subsidiaries of foreign companies and about 58 are foreign companies located abroad. We have no direct information as to what percentage of terminal equipment installed in this country is of foreign origin.

If I can be of further assistance to you on these or any other matters, please do not hesitate to contact me.

Sincerely,



Leon M. Kestenbaum
Deputy Chief (Policy)
Common Carrier Bureau